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December 2020

### Administrative Appeal Decision - Staine, Eric (2019-06-06)

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STATE OF NEW YORK – BOARD OF PAROLE

**ADMINISTRATIVE APPEAL DECISION NOTICE**

**Name:** Staine, Eric

**Facility:** Mohawk CF

**NYSID:** [REDACTED]

**Appeal Control No.:** 12-024-18 B

**DIN:** 09-A-4378

Appearances: Eric Staine 09A4378  
Mohawk Correctional Facility  
6415 Route 26  
P.O. Box 8450  
Rome, New York 13442

Decision appealed: November 2018 decision, denying discretionary release and imposing a hold of 24 months.

Board Member(s) who participated: Alexander, Demosthenes


Papers considered: Appellant's Letter-brief received March 29, 2019  
Appellant's Brief received April 15, 2019

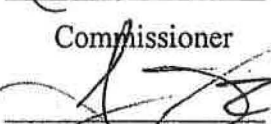
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

Final Determination: The undersigned determine that the decision appealed is hereby:

 ☒ Affirmed ☐ Vacated, remanded for de novo interview ☐ Modified to \_\_\_\_\_

 ☒ Affirmed ☐ Vacated, remanded for de novo interview ☐ Modified to \_\_\_\_\_

 ☒ Affirmed ☐ Vacated, remanded for de novo interview ☐ Modified to \_\_\_\_\_

**If the Final Determination is at variance with Findings and Recommendation of Appeals Unit, written reasons for the Parole Board's determination must be annexed hereto.**

This Final Determination, the related Statement of the Appeals Unit's Findings and the separate findings of the Parole Board, if any, were mailed to the Inmate and the Inmate's Counsel, if any, on 6/6/19.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

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**Findings:** (Page 1 of 2)

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Appellant challenges the November 2018 determination of the Board, denying release and imposing a 24-month hold. Appellant is serving time for two different crimes. For the first crime he was convicted as a Juvenile Offender for Murder 2<sup>nd</sup> Degree in which he shot the victim to death. [REDACTED]

[REDACTED] Appellant raises the following claims: 1) he was denied due process because his Office of Children and Family Services file was never transferred to DOCCS, so the Parole Board didn't have his complete records of his rehabilitation. 2) the COMPAS has numerous errors on it. 3) one of the instant offenses has expired. 4) the Board ignored appellant's version of the facts in the instant offense.

Appellant is correct that the Parole Board did not have the contents of his OCFS file. It is standard policy that OCFS does not forward it's file to the Parole Board.

As for the alleged COMPAS errors, appellant did not raise the matter during the Parole Board Release Interview, thereby waiving the issue. Matter of Shaffer v. Leonardo, 179 A.D.2d 980, 579 N.Y.S.2d 910 (3d Dept. 1992); Boddie v New York State Division of Parole, 288 F.Supp.2d 431 (S.D.N.Y. 2003). If the inmate was given a chance to discuss the matter at the interview and didn't mention it, the issue is without merit. Matter of Mercer v New York State Department of Corrections and Community Supervision, Index # 5872-13, *Decision/Order/Judgment* dated April 7, 2014 (Sup. Ct. Albany Co.)(Ceresia J.S.C.); Matter of Cox v Stanford, Index # 228-14, *Decision and Order* dated June 17, 2014 (Sup. Ct. Albany Co.)(McGrath J.S.C.). If the inmate fails to raise the issue of alleged COMPAS error at the interview, and the matter could have been corrected then, the issue is waived. Matter of Cox v Stanford, Index # 228-14, *Decision and Order* dated April 18, 2014 (Sup. Ct. Albany Co.)(McGrath J.S.C.).

That the term for one of the instant offenses has expired does not mean he has completed that sentence. Per Penal Law 70.30(1)(a) all maximums of concurrent multiple indeterminate sentences merge and are satisfied by the discharge of the term which has the longest unexpired term to run. People v Buss, 11 N.Y.3d 553; Lynch v Smith, 123 A.D.3d 1279, 999 N.Y.S.2d 219 (3d Dept. 2014). Per Penal Law §70.30(1)(b), the minimum and maximum sentences of the two indeterminate consecutive sentences are added to form aggregate minimum and aggregate maximum wholes. Thus, per Executive Law S259-i(3)(d)(iii), an inmate's eligibility for parole release and appearance before the Board are governed by the legal requirements of the new indeterminate sentence. Santiago v Alexander, 80 A.D.3d 1105, 916 N.Y.S.2d 529 (3d Dept. 2011). Per Penal Law 70.30(1), concurrent sentences and consecutive sentences yield single sentences, either by merger when concurrent, or by addition when consecutive, and they then aggregate into a single sentence. People v Brinson, 90 A.D.3d 670, 933 N.Y.S.2d 728 (3d Dept. 2011), Charles v New York State Department of Correctional Services, 96 A.D.3d 1341, 948

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N.Y.S.2d 172 (3d Dept. 2012); Baez v Superintendent Queensboro Correctional Facility, 127 A.D.3d 110, 5 N.Y.S.3d 216 (2d Dept. 2015). Thus, NYSDOCCS aggregates the sentences into a single, combined sentence, and the inmate is not sequentially completing his punishment for each particular conviction. People v Almestica, 97 A.D.3d 834, 949 N.Y.S.2d 425 (2d Dept. 2012). Per Penal law 70.30(1)(b), the inmate is subject to all the sentences that make up the merged or aggregate sentence he is serving, and the Parole Board may consider the facts of those crimes for those sentences that would have otherwise expired if not for the merger. Dawes v Annucci, 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3d Dept. 2014).

The appellant's version of the fact surrounding the instant offense is incorrect. Pursuant to Executive Law sections 259-i(2)(c)(A) and 259-k(1), the Board is required to obtain official reports and may rely on the information contained therein. Matter of Carter v. Evans, 81 A.D.3d 1031, 916 N.Y.S.2d 291 (3d Dept.) (presentence investigation report), lv. denied, 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011); see also Billiteri v. United States Bd. of Parole, 541 F.2d 938, 944-945 (2d Cir. 1976). To the extent Appellant contends the Board relied on erroneous information in the pre-sentence report, this is not the proper forum to raise the issue. Any challenge to the pre-sentence report must be made to the original sentencing court. Matter of Delrosario v. Stanford, 140 A.D.3d 1515, 34 N.Y.S.3d 696 (3d Dept. 2016); Matter of Wisniewski v. Michalski, 114 A.D.3d 1188, 979 N.Y.S.2d 745 (4th Dept. 2014); Matter of Vigliotti v. State of New York, Executive Div. of Parole, 98 A.D.3d 789, 950 N.Y.S.2d 619 (3d Dept. 2012). The Board is mandated to consider the report and is entitled to rely on the information contained in the report. Executive Law § 259-i(2)(c)(A); 9 N.Y.C.R.R. § 8002.2(d)(7);<sup>1</sup> Matter of Carter v. Evans, 81 A.D.3d 1031, 916 N.Y.S.2d 291, 293 (3d Dept.), lv. denied, 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011).

**Recommendation:** Affirm.

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<sup>1</sup> **NOTE TO BOP ATTORNEYS:** For interviews conducted before the 2017 amendments, the provision was found in 9 N.Y.C.R.R. § 8002.3(a)(9) (2014).